

APPEAL NO. 032024
FILED SEPTEMBER 22, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on July 3, 2003. The hearing officer resolved the disputed issues by deciding that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the fourth, fifth, sixth, seventh, or eighth quarters; that the carrier is relieved of liability for SIBs for the fourth through the sixth quarters, and until February 19, 2003, for the seventh quarter because of the claimant's failure to timely file her Application for [SIBs] (TWCC-52) for those quarters; and that the carrier is not relieved of liability for the eighth quarter because the claimant timely filed her TWCC-52 for the eighth quarter although the claimant is not otherwise entitled to SIBs on the merits. The claimant appealed on sufficiency of the evidence grounds. The appeal file does not contain a response from the respondent (carrier).

DECISION

Affirmed.

It was undisputed that the claimant sustained a compensable injury on _____. The parties stipulated that the claimant reached maximum medical improvement on May 23, 2000, with a 18% impairment rating; that she has not commuted any portion of her impairment income benefits; that the fourth quarter of SIBs began on March 6 and ended on June 4, 2002; that the qualifying period for the fourth quarter of SIBs began on November 22, 2001, and ended on February 20, 2002; that the fifth quarter of SIBs began on June 5 and ended on September 3, 2002; that the qualifying period for the fifth quarter of SIBs began on February 21 and ended on May 22, 2002; that the sixth quarter of SIBs began on September 4 and ended on December 3, 2002; that the qualifying period for the sixth quarter of SIBs began on May 23 and ended on August 21, 2002; that the seventh quarter of SIBs began on December 4, 2002, and ended on March 4, 2003; that the qualifying period for the seventh quarter of SIBs began on August 22 and ended on November 20, 2002; that the eighth quarter of SIBs began on March 5 and ended on June 3, 2003; and that the qualifying period for the eighth quarter of SIBs began on November 21, 2002, and ended on February 19, 2003.

Eligibility criteria for SIBs entitlement are set forth in Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102). At issue is whether the claimant met the good faith attempt to obtain employment requirement of Section 408.142(a)(4) and Rule 130.102(b)(2). The claimant contends that she has a total inability to work in any capacity. It was undisputed that the claimant did not perform any job searches during the qualifying periods for the SIBs quarters at issue.

Rule 130.102(d)(4) provides that an injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee has been unable to perform any type of work in any capacity, has provided a narrative report from a doctor which specifically explains how the injury causes a total inability to work, and no other records show that the injured employee is able to return to work. The hearing officer found that the claimant possessed an ability to work.

Whether the claimant had an ability to work and whether she attempted in good faith to obtain employment commensurate with her ability to work during the relevant qualifying periods presented fact questions for the hearing officer to determine from the evidence presented. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). We conclude that the complained-of findings regarding the good faith criterion for SIBs entitlement are supported by sufficient evidence and are not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986)

Given our affirmance of the hearing officer's determination that the claimant is not entitled to SIBs for the fourth through the eighth quarters, we need not address the issue of whether the carrier would otherwise be relieved of liability for the fourth, fifth, sixth, and a portion of the seventh quarter of SIBs due to the claimant not timely filing an application for payment of benefits.

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **ZURICH AMERICAN INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**TIM MCGUIRE
9330 LBJ FREEWAY, SUITE 1200
DALLAS, TEXAS 75243.**

Margaret L. Turner
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Edward Vilano
Appeals Judge